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April 30, 2012

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: CG Docket No. 02-278

Dear Secretary Dortch:

The Retail Industry Leaders Association (RILA) is pleased to respond to the Public Notice and Request for Comment from the FCC's Consumer and Governmental Affairs Bureau on the Petition for Expedited Declaratory Ruling from SoundBite Communications, Inc. *See* FCC, Public Notice DA 12-511 (released March 30, 2012). We thank you for the opportunity to offer our views and considerations on SoundBite's petition before the FCC. RILA supports SoundBite's petition and their position that sending a one-time text message confirming a consumer's opt-out request that no further text messages be sent in the future is not a violation of the Telephone Consumer Protection Act (TCPA) or Section 64.1200 of the Commission's rules.

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Its members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Current mobile marketing practices are placing companies in a Catch 22 situation between the threat of class action lawsuits alleging violations of the TCPA and prevailing industry standards regarding text messaging opt-out confirmations. On the one hand, the Mobile Marketing Association has established best practices that require sending a text message to confirm receipt of a request to opt-out of future text messages. These self-regulatory best practices are enforced by the CTIA – The Wireless Association, which considers a failure to send a confirmatory text in response to an opt-out message to be a compliance violation.

On the other hand, a number of class action lawsuits have been filed alleging the confirmation text violates the provisions of the TCPA and the implementing rule - specifically the prohibition against making a non-emergency call using an automatic dialing system or an artificial or prerecorded voice to, a telephone number assigned to a cellular telephone service, without the recipient's prior express consent.

RILA supports sending a prompt confirmatory text message as a good business practice, as well as good consumer service, our member companies can use to inform their customers that their opt-out requests

were in fact received. RILA respectfully requests that the FCC issue a declaratory ruling that clarifies that a confirmatory text message is not a violation of the TCPA. RILA believes that if such a ruling is not forthcoming there is a possibility that the self-regulatory system could be undermined.

We would be please to discuss RILA's views with you further at your convenience.

Respectfully submitted,



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